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March 20, 2008

VIA HAND DELIVERY

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The Honorable Gregory M. Sleet
United States District Court
844 North King Street
Lockbox 19
Wilmington, Delaware 19801

Re: *Greenhouse International, Inc. v. Moulton Logistics Management, Inc.*
C.A. No. 07-722-GMS-LPS

Dear Chief Judge Sleet:

This firm represents Defendant Moulton Logistics Management, Inc. in the above-referenced matter. We are writing in brief response to Plaintiff Greenhouse International, Inc.'s filing of its Notice of New Supplemental Authority. Plaintiff's Notice attaches the California Superior Court's judgment addressing Moulton's Petition to Compel Arbitration in California. While Plaintiff's Notice is appropriate, it fails, however to place the judgment in its proper context. As described herein, the California Superior Court's judgment does not affect the motions pending before this Court because the judgment is subject to a *de novo* appeal.

On February 26, 2008, Moulton appealed the California Superior Court's order and judgment on its Petition to Compel Arbitration. (Appeal attached as Exhibit A). Under California law, any appeal from the denial of a motion to compel arbitration is an appeal *de novo*. *Baker v. Osborne Development Corp.*, 71 Cal. Rptr. 3d 854, 860 (Cal. App. 2008); *Giuliano v. Inland Empire Personnel, Inc.*, 58 Cal. Rptr. 3d 5, 11 (Cal. App. 2007) (recognizing that where there is no disputed extrinsic evidence considered by the trial court, any review of arbitrability is a *de novo* review); *Omar v. Ralphs Grocery Co.*, 13 Cal. Rptr. 3d 562, 565 (Cal. App. 2004) (recognizing that it is "well settled that we review *de novo* the legal question whether the FAA required the court to grant appellants' motion to compel arbitration"); *see also First Liberty Inv. Group v. Nicholsberg*, 145 F.3d, 674, 649 (3d Cir. 1998) (recognizing that an appeal of the issue of arbitrability is an appeal *de novo*).

Based on Moulton's appeal *de novo* of the California Superior Court's judgment on its Petition to Compel Arbitration, the underlying judgment is not a final judgment for purposes of *res judicata* or collateral estoppel. *See Scripps Clinic and Research Foundation v. Baxter*

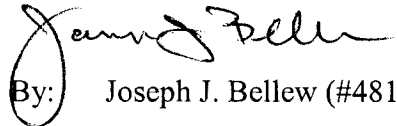
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Travenol Laboratories, Inc., 1989 WL 120610, at *1 (D. Del. 1989) (recognizing that when an appeal removes the entire matter to the appellate court through a *de novo* appeal, then the underlying judgment is not a final judgment for purposes of *res judicata* or collateral estoppel). Accordingly, the California Superior Court judgment has no preclusive effect on this Court's consideration of Moulton's motion to stay (D.I. 5) and Defendant's motion to enjoin (D.I. 8).

As always, should the Court have any questions or concerns about this matter, counsel is available at the Court's convenience.

Respectfully,

COZEN O'CONNOR



By: Joseph J. Bellew (#4816)

JJB

cc: Clerk of Court (*via ECF*)
James M. Lennon, Esq. (*via ECF*)

Exhibit A

APP-002

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Michael S. Wildermuth, SB#143758 Nevers, Palazzo, Maddux & Packard, PLC 31248 Oak Crest Dr., Suite 100 Westlake Village, CA 91361 TELEPHONE NO.: (818) 879-9700 FAX NO. (Optional): (818) 879-9680 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Petitioner	FOR COURT USE ONLY ORIGINAL FILED FEB 26 2008 LOS ANGELES SUPERIOR COURT CASE NUMBER: LC080008
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 6230 Sylmar Ave. MAILING ADDRESS: CITY AND ZIP CODE: Van Nuys, CA 91401 BRANCH NAME: Northwest District	
PLAINTIFF/PETITIONER: MOULTON LOGISTICS MANAGEMENT, INC. DEFENDANT/RESPONDENT: GREENHOUSE INTERNATIONAL, LLC	
<input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)	

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. NOTICE IS HEREBY GIVEN that (name): Petitioner Moulton Logistics Management, Inc. appeals from the following judgment or order in this case, which was entered on (date): February 20, 2008
- ☐ Judgment after jury trial
☐ Judgment after court trial
☐ Default judgment
☐ Judgment after an order granting a summary judgment motion
☐ Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
☐ Judgment of dismissal after an order sustaining a demurrer
☐ An order after judgment under Code of Civil Procedure section 904.1(a)(2)
☐ An order of judgment under Code of Civil Procedure section 904.1(a)(3)-(13)
☒ Other (describe and specify code section that authorizes this appeal): Order denying petition to compel contractual arbitration under Code of Civil Procedure Sections 1281.2 and 1294 (a).
2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal:
- b. Date superior court clerk mailed notice of original appeal:
- c. Court of Appeal case number (if known):

FEE RECEIVED
CHECK# 19798

Date: 2/25/08

Michael S. Wildermuth
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

APP-002

CASE NAME: MOULTON LOGISTICS MANAGEMENT, INC. v.
GREENHOUSE INTERNATIONAL, LLC

CASE NUMBER:
LC080008

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

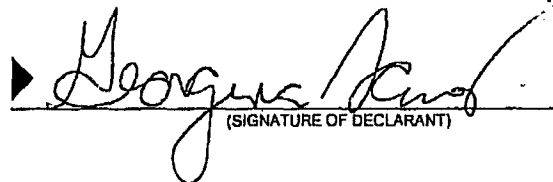
☒ Mail ☐ Personal Service

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is (specify): 31248 Oak Crest Dr., Suite 100, Westlake Village, CA 91361
3. I mailed or personally delivered a copy of the *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* as follows (complete either a or b):
 - a. ☒ Mail. I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope and
 - (a) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) ☒ placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served: John Bialecki Esq.
 - (b) Address on envelope: CRANDALL, WADE & LOWE
7700 Irvine Center Drive, Suite 700
Irvine, CA 92618-2929
 - (c) Date of mailing: 2/25/08
 - (d) Place of mailing (city and state): Westlake Village, CA
 - b. ☐ Personal delivery. I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 2/25/08

Georgina Sandy
(TYPE OR PRINT NAME)


(SIGNATURE OF DECLARANT)